

Hearing Date: September 29, 2021 at 11:00 a.m.
Objection Deadline: August 5, 2021

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

In re:

ISLAND VIEW CROSSING II, L.P.,

Debtor.

Case No. 17-14454-elf

Chapter 11

LIMITED OBJECTION OF BONNIE FINKEL, CHAPTER 7 TRUSTEE OF THE BANKRUPTCY ESTATES OF CALNSHIRE ESTATES, LLC TO THE MOTION OF KEVIN O'HALLORAN, CHAPTER 11 TRUSTEE, FOR ENTRY OF AN ORDER DETERMINING: (A) THE VALUE OF THE DEBTOR'S REAL PROPERTY, (B) THE AMOUNT OF PRUDENTIAL SAVINGS BANK'S SECURED CLAIM PURSUANT TO 11 U.S.C. § 506(a), (C) THE AMOUNT OF PRUDENTIAL'S INTEREST, FEES, COSTS OR OTHER CHARGES PURSUANT TO 11 U.S.C. § 506(b), (D) THE AMOUNT OF THE BANKRUPTCY ESTATE'S SURCHARGE OF PRUDENTIAL'S COLLATERAL PURSUANT TO 11 U.S.C. § 506(c), (E) THE TRUSTEE'S ENTITLEMENT TO USE THE PROCEEDS FROM THE SALE OF RESIDENTIAL UNITS IN PHASE 1 (AFTER PAYMENT OF THE RELEASE PRICES SET FORTH IN THE PRUDENTIAL RELEASE OF LIENS AGREEMENT) TO PAY PERMITTED CLAIMS UNDER THE PLAN, (F) THE ESTATE'S ENTITLEMENT TO RELIEF UNDER THE EQUITIES OF THE CASE EXCEPTION PURSUANT TO § 552(b)(1), AND (G) GRANTING RELATED RELIEF (D.I. 765)

Bonnie Finkel, Chapter 7 Trustee of Calnshire Estates, LLC (Bankr. No. 17-14457-elf) (**'Finkel'**), by her undersigned attorneys, hereby submits her limited objection objects to the *Motion of Kevin O'Halloran, Chapter 11 Trustee, for Entry of an Order Determining: (A) the Value of the Debtor's Real Property, (B) the Amount of Prudential Savings Bank's Secured Claim Pursuant to 11 U.S.C. § 506(a), (C) the Amount of Prudential's Interest, Fees, Costs or Other Charges Pursuant to 11 U.S.C. § 506(b), (D) the Amount of the Bankruptcy Estate's Surcharge of Prudential's Collateral Pursuant to 11 U.S.C. § 506(c), (E) the Trustee's Entitlement to Use the Proceeds from the Sale of Residential Units in Phase 1 (After Payment of the Release Prices Set Forth in the Prudential Release of Liens Agreement) to Pay Permitted*

Claims Under the Plan, (F) the Estate's Entitlement to Relief Under the Equities of the Case Exception Pursuant to § 552(b)(1), and (G) Granting Related Relief (D.I. 765) (the “**Valuation Motion**”). Calnshire Estates, LLC (“**Calnshire**”), the holder of a scheduled general unsecured claim (Class 9). Calnshire has objected to the Debtor's proposed Plan of Reorganization on the basis that it is being discriminated against, as opposed to other members of Class 9, because insiders such as Calnshire are not to be paid until non-insiders within the class have been paid.

LIMITED OBJECTION

1. On December 20, 2017, Finkel was appointed as the Chapter 7 Trustee for Calnshire. (Bankr. No. 17-14457-elf at D.I. No. 93).

2. Calnshire is a scheduled creditor of Island View Crossing II, L.P. (“**Debtor**”), having a non-priority unsecured claim in the amount of \$175,519.28. (“**Calnshire Claim**”) (D.I. 31, Schedule E/F at claim 3.8).

3. Calnshire is a related entity to the Debtor, and is an insider as defined by the Plan. (D.I. 617 at ¶ 1.58).

4. Calnshire filed an *Objection to Confirmation of Plan* on July 9, 2021 (“**Objection**”). (D.I. 749).

5. As discussed in the Objection, the Plan defines a General Unsecured Claim as “all Claims, including Rejection Claims that are not Administrative Claims, Priority Tax Claims, Class 1 Claims, Class 2 Claims, Class 3 Claims, Class 4 Claims, Class 5 Claims, Class 6 Claims, Class 7 Claims, Class 8 Claims, Class 10 Interests or Class 11 Interest.” (D.I. 617 at ¶1.51). Accordingly, the Calnshire Claim is a general unsecured claim and falls within Class 9 as classified by the Plan.

6. The Plan also provides that Class 9 General Unsecured Claims are impaired, and that each holder of an Allowed General Unsecured Claim shall receive its Pro Rata share of the Class 9 Unsecured Creditor Fund. (D.I. 617 at ¶ 3.9.1).

7. An “Allowed” claim includes “any Claim against the Debtor that has been listed by the Debtor in the Schedules” (D.I. 617 at ¶ 1.6). Accordingly, as the Calnshire Claim is a scheduled claim, it is an Allowed claim. However, the definition of “Permitted Claims,” elevates certain Allowed Claims; that is, all Allowed Claims except for “claims held by Insiders” (D.I. 617 at ¶ 1.68). The Calnshire Claim is not a Permitted Claim because it is held by an Insider.

8. Class 4, 5 and 6 claims are subordinate to Permitted Claims, but are not subordinated to the Calnshire Claim, because the Calnshire Claim is held by an insider.

9. Finkel argues, among other things, that Calnshire, as an insider, it is not provided with the same opportunity as non-insiders within Class 9, and is discriminated against in that the allowed claims of other members of Class 9 prime Class 4, 5 and 6 claims, whereas Calnshire’s claim does not receive such preferential treatment, such that the Plan should not be confirmed.

10. The Valuation Motion seeks relief, including but not limited to:

WHEREFORE, the Trustee respectfully request that this Court enter an Order granting this Motion and determining:

...

(e) the Trustee’s entitlement to use the proceeds from the sale of residential units in Phase 1 (after payment of the Release Prices as set forth in the Prudential Release of Liens Agreement) to fund Permitted Claims under the Plan;...

(D.I. 765 at p. 41 of 41)

11. Accordingly, to the extent that subpart (e) of the Trustee’s claim for relief conflicts with, negates, and/or prejudices the relief sought by Finkel in her Objection, subpart (e) of the Trustee’s claim for relief should be denied.

WHEREFORE, Bonnie B. Finkel, Chapter 7 Trustee, Estates of Calnshire Estates, LLC respectfully requests that the Bankruptcy Court sustain her Limited Objection to the Valuation Motion for the reasons above.

Respectfully Submitted,

McELROY, DEUTSCH, MULVANEY
& CARPENTER, LLP

Dated: August 4, 2021

By: /s/ Gary Bressler

Gary Bressler, Esq. (PA No. 35224)
1 Penn Center – Suburban Station
1617 JFK Blvd., Suite 1500
Philadelphia, Pennsylvania 19103-1815
Telephone: (215) 557-2900
Facsimile: (215) 557-2990
E-mail: gbressler@mdmc-law.com

*Counsel to Bonnie Finkel, Chapter 7 Trustee of
Calnshire Estates*